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CLEARINGHOUSE RULE 95-140

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section HSS 52.11 (2) (e) requires a licensee to establish and maintain a community advisory committee, as required by s. 48.68 (4), Stats. However, the statute only requires a “good faith effort” to establish such a committee. This should be clarified in the rule.

b. Under s. HSS 52.12 (2) (b), the qualifications for a social work case work supervisor are set forth. However, under the statutes relating to social worker certification in ch. 457, Stats., qualifications for social workers are different. See, specifically, s. 457.08, Stats. Is it anticipated that the supervisor will be a certified social worker? If so, the department should examine s. 457.08, Stats.

c. Section HSS 52.42 (8) (a) [it should be noted that the paragraph letter “(a)” was omitted] provides that department approval is needed for use of certain behavior management techniques and medications. It should be made clear that more than department approval would be needed for use of behavior modifying drugs on children, although it is specified elsewhere in the rule. Parental consent would be needed to give medication to a child, unless the child was committed pursuant to a court order. In that event, the procedures under s. 51.61, Stats., for using medications would need to be followed if the medications were administered without the patient’s consent.

2. Form, Style and Placement in Administrative Code

a. Section HSS 52.03 (21) and (22) should be reversed, so that they are in alphabetical order.

b. In s. HSS 52.11 (1) (a) and (b) and (2), “A licensee” should replace “The licensee” or “The licensee of a center.” The word “also” should be deleted from sub. (1) (b).

c. Throughout the rule, subdivision numbers should end in a period. For example, see s. HSS 52.12 (2) (e) (intro.), (f) and (g).

d. In s. HSS 52.42 (7) (a) 3. e., reference is made to “a physician licensed under ch. 448, Stats.” This method of referring to a physician is used several times throughout the rule. It may be better to define “physician” in the definition section to eliminate the need to consistently repeat the phrase “a physician licensed under ch. 448, Stats.”

e. It is permissible to use an acronym if it is previously defined and used consistently. [See s. 1.01 (8), Manual.] This should be done in s. HSS 52.51, for the Department of Industry, Labor and Human Relations. Also see the next comment.

f. References are made in the rule to agencies whose names will change under 1995 Wisconsin Act 27 (the 1995-97 Biennial Budget Act), such as the Department of Industry, Labor and Human Relations and the Department of Public Instruction. Revisions should be made to the rule to refer to the renamed agencies.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section HSS 52.40 (5) (i) provides that a center shall have a grievance procedure for residents which shall comply with the standards established by the department under s. 51.65 (5) (b), Stats. First, the correct reference is s. 51.61 (5) (b), Stats. Second, thought should be given as to whether all centers, or just those with clients under ch. 51, Stats., should be made to comply with the standards.

b. In s. HSS 52.41 (8), regarding resident accounts and restitution plans, a cross-reference should be inserted for clients under ch. 51, Stats., to s. 51.61 (1) (v), Stats., which relates to accounting for residents’ money for patients under ch. 51.

c. In s. HSS 52.46 (5) (c), relating to emergency procedures for administration of psychotropic medication, a cross-reference to s. 51.61, Stats., procedures for medication without consent, should be inserted for those residents who are under ch. 51, Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section HSS 52.02 (2) (a) should be revised to clarify that exceptions may be granted only to nonstatutory requirements in the chapter.

b. In s. HSS 52.03 (9), the definition of “informed consent” states that “informed consent” means written consent which is voluntary and “based on understanding.” This reference to consent being “based on understanding” is vague and does not provide much guidance for determining whether or not informed consent has been given. This should be clarified.

c. It seems confusing to insert a definition of “young person” in s. HSS 52.10 (26), since these centers are referred to as “residential care centers for children and youth.” In any

event, the definition of “young person” (or “youth,” if this is the term that is substituted) should be refined. It seems that it would be useful in the rule to have a separate definition of “child” and a “youth,” which would appear to mean a person who resides in a residential care center for children and youth but is age 18, 19 or 20. This is necessary in many places in the rule because youths are treated differently due to the fact that they are legally adults, even though they are residing in a residential care center for children and youth.

d. In s. HSS 52.11 (2) (h), the word “placing” should be inserted before the word “agency” in the first line.

e. In s. HSS 52.12 (2) (c) 3. b., “persons” should follow “disabled.”

f. In s. HSS 52.12 (2) (i), “personnel applications” should be replaced by “employment applications” since this is the title of sub. (3).

g. In s. HSS 52.12 (3) (d), the phrase “substantiated charge” should be clarified. Presumably, this is not a criminal charge.

h. In the second sentence of the Note following s. HSS 52.12 (3) (e), “with” should replace “in.”

i. In s. HSS 52.12 (5) (d), it is not clear how much experience an “experienced center resident care worker” needs to have.

j. In s. HSS 52.12 (5) (g), the subdivisions should be reversed for clarity.

k. In s. HSS 52.13 (1), it may be easier to check the cross-references in these paragraphs if the paragraphs were arranged according to the numerical order of the cross-references. This would provide some pattern for the paragraphs. Currently, they do not seem to follow any particular order.

l. In s. HSS 52.22 (3), does this subsection apply to youth ages 18, 19 and 20 or just to children? Although reference is made to a “child” in the introductory paragraph, s. HSS 52.22 (3) (b) and (c) appear to apply to both children and youth. This should be clarified.

m. In s. HSS 52.22 (4) (a) (intro.), the informed consent must be obtained from a prospective resident’s parent, guardian or legal custodian if the prospective resident is a child or a person who is incompetent. Youth who are ages 18, 19 and 20 may provide this consent for themselves. This should be clarified.

n. In s. HSS 52.22 (4) (b), what additional types of informed consent are necessary to cover psychotropic medications, nonemergency major surgery or major dental work?

o. In s. HSS 52.22 (7), the use of the term “young person” is used interchangeably with “new resident.” This is confusing. One term should be used consistently.

p. In s. HSS 52.22 (8), is a youth age 18, 19 or 20 permitted to designate someone in the register besides the parent, guardian or legal custodian?

q. In s. HSS 52.23 (1) (d), is it necessary to obtain the resident's consent, if the resident is age 18 or older, to involve the resident's parent, guardian or legal custodian in conducting an assessment and developing a treatment plan?

r. In s. HSS 52.24 (3), reference is made to a "planned or unplanned discharge." If there is a difference in procedures between these two forms of discharge, they should be specified in s. HSS 52.24 (1).

s. In s. HSS 52.31 (3) (s), reference is made to s. 51.61 (1) (o), Stats. Is this intended to apply only to clients under ch. 51, Stats., or is it meant to apply to all others in the center? This should be clarified.

t. In s. HSS 52.41 (1) (c) 12., there appears to be some words missing from the first two lines.

u. In s. HSS 52.42 (5) (b) 4., "time out" should be hyphenated.

v. In s. HSS 52.42 (7) (a) 3. d., the words "if applicable" should be inserted after the word "resident." For residents age 18 and over, the informed consent of the parent, guardian or legal custodian presumably would not be needed. Also see par. (d) 2.

w. In s. HSS 52.45 (3) (a) 1., the center is required to refer pregnant residents or residents who are mothers with babies to the Women, Infants and Children (WIC) Program. However, this is an income-based program for which all persons may not be eligible. This should be clarified.

x. In s. HSS 52.46 (1) (b), "center nonmedically nonlicensed staff" should be replaced by a clearer phrase, such as "center staff who are not medically licensed."

y. In s. HSS 52.47 (4) (c), after the reference to s. 346.62, Stats., the word "or" should be replaced by the word "and."

z. In s. HSS 52.55 (8) (intro.), in the last line, the word "remain" should be deleted. Also, "technical college" should replace "vocational, technical and adult education (VTAE) college." These schools were renamed in 1993 Wisconsin Act 399.

aa. In s. HSS 52.56 (8), the phrase "abutts (sic) up to a ceiling" should be replaced by "abuts a ceiling."

ab. In s. HSS 52.62 (1) (e), the words "probationary" and "provisional" are both used. One term should be used consistently.

ac. In s. HSS 52.62 (1) (f), how much time will an applicant have to come into compliance?